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SENATE BILL 201

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Bernadette M. Sanchez

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO MUNICIPALITIES AND COUNTIES; AMENDING THE TAX INCREMENT FOR DEVELOPMENT ACT; UPDATING THE LIST OF GROSS RECEIPTS TAXES THAT CAN BE DEDICATED TO A DISTRICT; PROVIDING FOR DISTRIBUTION FROM A GROSS RECEIPTS TAX INCREMENT DEBT SERVICE RESERVE ACCOUNT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 5-15-1 NMSA 1978 (being Laws 2006, Chapter 75, Section 1) is amended to read:

"5-15-1. SHORT TITLE.--~~[Sections 1 through 27 of this act]~~ Chapter 5, Article 15 NMSA 1978 may be cited as the "Tax Increment for Development Act"."

Section 2. Section 5-15-3 NMSA 1978 (being Laws 2006, Chapter 75, Section 3) is amended to read:

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1 "5-15-3. DEFINITIONS.--As used in the Tax Increment for
2 Development Act:

3 A. "adjusted taxable gross receipts" means taxable
4 gross receipts plus the amount of deductions allowed under
5 Sections 7-9-92 and 7-9-93 NMSA 1978;

6 [~~A.~~] B. "base adjusted taxable gross receipts"
7 means

8 [~~(1)~~] the total amount of adjusted taxable
9 gross receipts [~~taxes collected within a tax increment~~
10 ~~development district, as estimated by the governing body that~~
11 ~~adopted a resolution to form that district, in consultation~~
12 ~~with the taxation and revenue department] for reporting periods
13 covering business activity in the calendar year preceding the
14 formation of the tax increment development district [~~or~~] and,
15 when an area is added to an existing district, the amount of
16 adjusted taxable gross receipts [~~taxes collected~~] reported in
17 the added area in the calendar year preceding the effective
18 date of the modification of the tax increment development plan
19 and designated by the governing body to be available as part of
20 the gross receipts tax increment; [~~and~~~~

21 ~~(2) any amount of gross receipts taxes that~~
22 ~~would have been collected in such year if any applicable~~
23 ~~additional gross receipts taxes imposed after that year had~~
24 ~~been imposed in that year] provided that in the first year that
25 a gross receipts tax increment is dedicated, the amount of base~~

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1 adjusted taxable gross receipts shall be estimated by
2 multiplying the amount of adjusted taxable gross receipts
3 reported in that first year by a factor reflecting an estimated
4 growth rate from the base year, where the estimate is made by
5 the governing body that adopted a resolution to form that
6 district in consultation with the taxation and revenue
7 department;

8 [B-] C. "base property taxes" means:

9 (1) the portion of property taxes produced by
10 the total of all property tax levied at the rate fixed each
11 year by each governing body levying a property tax on the
12 assessed value of taxable property within the tax increment
13 development area last certified for the year ending immediately
14 prior to the year in which a tax increment development plan is
15 approved for the tax increment development area, [Ø] and, when
16 an area is added to an existing tax increment development area,
17 "base property taxes" means that portion of property taxes
18 produced by the total of all property tax levied at the rate
19 fixed each year by each governing body levying a property tax
20 upon the assessed value of taxable property within the tax
21 increment development area on the date of the modification of
22 the tax increment development plan and designated by the
23 governing body to be available as part of the property tax
24 increment; and

25 (2) any amount of property taxes that would

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1 have been collected in such year if any applicable additional
2 property taxes imposed after that year had been imposed in that
3 year;

4 ~~[G.]~~ D. "county option gross receipts taxes" means
5 gross receipts taxes imposed by counties pursuant to the Local
6 Hospital Gross Receipts Tax Act, the County Local Option Gross
7 Receipts Taxes Act ~~[and]~~ or the County Correctional Facility
8 Gross Receipts Tax Act designated by the governing body of the
9 county to be available as part of the gross receipts tax
10 increment;

11 ~~[D.]~~ E. "district" means a tax increment
12 development district;

13 ~~[E.]~~ F. "district board" means a board formed in
14 accordance with the provisions of the Tax Increment for
15 Development Act to govern a tax increment development district;

16 ~~[F.]~~ G. "enhanced services" means public services
17 provided by a municipality or county within the district at a
18 higher level or to a greater degree than otherwise available to
19 the land located in the district from the municipality or
20 county, including such services as public safety, fire
21 protection, street or sidewalk cleaning or landscape
22 maintenance in public areas; provided that "enhanced services"
23 does not include the basic operation and maintenance related to
24 infrastructure improvements financed by the district pursuant
25 to the Tax Increment for Development Act;

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1 ~~[G.]~~ H. "governing body" means the city council or
2 city commission of a city, the board of trustees or council of
3 a town or village or the board of county commissioners of a
4 county;

5 ~~[H.]~~ I. "gross receipts tax increment" means the
6 total of monthly gross receipts ~~[taxes collected within]~~ tax
7 increments for a tax increment development district ~~[in excess~~
8 ~~of the base gross receipts taxes collected]~~ for the duration of
9 the existence of ~~[a tax increment development]~~ the district and
10 distributed to the district in the same manner as distributions
11 are made under the provisions of the Tax Administration Act;

12 ~~[I.]~~ J. "gross receipts tax increment bonds" means
13 bonds issued by a district in accordance with the Tax Increment
14 for Development Act, the pledged revenue for which is a gross
15 receipts tax increment;

16 K. "gross receipts tax increment distribution year"
17 means September 1 through August 31 of the following year if
18 the resolution dedicating a gross receipts tax increment was
19 effective on July 1, and March 1 through the last day of
20 February of the following year if the resolution dedicating a
21 gross receipts tax increment was effective on January 1;

22 L. "gross receipts tax increment factor" means:
23 (1) if the base adjusted taxable gross
24 receipts are greater than zero, the quotient of dividing the
25 cumulative amount of adjusted taxable gross receipts in the

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1 current gross receipts tax increment distribution year by the
2 cumulative amount of adjusted taxable gross receipts in the
3 corresponding business activity months of the base gross
4 receipts tax increment distribution year, if that quotient is
5 greater than one, and otherwise one; or

6 (2) if base adjusted taxable gross receipts is
7 zero, two;

8 [J-] M. "local government" means a municipality or
9 county;

10 N. "monthly gross receipts tax increment" means the
11 greater of:

12 (1) the result of the following computation:
13 subtracting one from the gross receipts tax increment factor
14 and multiplying the result by the cumulative amount of gross
15 receipts tax reported on returns in the current gross receipts
16 tax increment distribution year; and subtracting from that
17 result the cumulative amount of monthly gross receipts tax
18 increment distributed to the district for prior months in the
19 current gross receipts tax increment distribution year; and
20 subtracting from that result any amount by which the gross
21 receipts tax increment at the end of the prior gross receipts
22 tax increment distribution year exceeds the sum of the amounts
23 determined for the last month of all preceding gross receipts
24 tax distribution years by subtracting one from the gross
25 receipts tax increment factor for the month and multiplying the

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1 result by the cumulative amount of gross receipts tax reported
2 on returns in that gross receipts tax increment distribution
3 year; or

4 (2) zero;

5 [~~K~~] O. "municipal option gross receipts taxes"
6 means those gross receipts taxes imposed by municipalities
7 pursuant to the Municipal Local Option Gross Receipts Taxes Act
8 and designated by the governing body of the municipality to be
9 available as part of the gross receipts tax increment;

10 [~~L~~] P. "municipality" means an incorporated city,
11 town or village;

12 [~~M~~] Q. "owner" means a person owning real property
13 within the boundaries of a district;

14 [~~N~~] R. "person" means an individual, corporation,
15 association, partnership, limited liability company or other
16 legal entity;

17 [~~O~~] S. "project" means a tax increment development
18 project;

19 [~~P~~] T. "property tax increment" means all property
20 tax collected on real property within the designated tax
21 increment development area that is in excess of the base
22 property tax until termination of the district and distributed
23 to the district in the same manner as distributions are made
24 under the provisions of the Tax Administration Act;

25 [~~Q~~] U. "property tax increment bonds" means bonds

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1 issued by a district in accordance with the Tax Increment for
2 Development Act, the pledged revenue for which is a property
3 tax increment;

4 [R-] V. "public improvements" means on-site
5 improvements and off-site improvements that directly or
6 indirectly benefit a tax increment development district or
7 facilitate development within a tax increment development area
8 and that are dedicated to the governing body in which the
9 district lies. "Public improvements" [~~include~~] includes:

10 (1) sanitary sewage systems, including
11 collection, transport, treatment, dispersal, effluent use and
12 discharge;

13 (2) drainage and flood control systems,
14 including collection, transport, storage, treatment, dispersal,
15 effluent use and discharge;

16 (3) water systems for domestic, commercial,
17 office, hotel or motel, industrial, irrigation, municipal or
18 fire protection purposes, including production, collection,
19 storage, treatment, transport, delivery, connection and
20 dispersal;

21 (4) highways, streets, roadways, bridges,
22 crossing structures and parking facilities, including all areas
23 for vehicular use for travel, ingress, egress and parking;

24 (5) trails and areas for pedestrian,
25 equestrian, bicycle or other non-motor vehicle use for travel,

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1 ingress, egress and parking;

2 (6) pedestrian and transit facilities, parks,
3 recreational facilities and open space areas for the use of
4 members of the public for entertainment, assembly and
5 recreation;

6 (7) landscaping, including earthworks,
7 structures, plants, trees and related water delivery systems;

8 (8) public buildings, public safety facilities
9 and fire protection and police facilities;

10 (9) electrical generation, transmission and
11 distribution facilities;

12 (10) natural gas distribution facilities;

13 (11) lighting systems;

14 (12) cable or other telecommunications lines
15 and related equipment;

16 (13) traffic control systems and devices,
17 including signals, controls, markings and signage;

18 (14) school sites and facilities with the
19 consent of the governing board of the public school district
20 for which the facility is to be acquired, constructed or
21 renovated;

22 (15) library and other public educational or
23 cultural facilities;

24 (16) equipment, vehicles, furnishings and
25 other personal property related to the items listed in this

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1 subsection;

2 (17) inspection, construction management,
3 planning and program management and other professional services
4 costs incidental to the project;

5 (18) workforce housing; and

6 (19) any other improvement that the governing
7 body determines to be for the use or benefit of the public;

8 [~~S-~~] W. "resident qualified elector" means a person
9 who resides within the boundaries of a tax increment
10 development district or proposed tax increment development
11 district and who is qualified to vote in the general elections
12 held in the state pursuant to Section 1-1-4 NMSA 1978;

13 [~~F-~~] X. "state gross receipts tax" means the gross
14 receipts tax imposed pursuant to the Gross Receipts and
15 Compensating Tax Act, but does not include that portion
16 distributed to municipalities pursuant to Sections 7-1-6.4 and
17 7-1-6.46 NMSA 1978 or to counties pursuant to Section 7-1-6.47
18 NMSA 1978;

19 [~~U-~~] Y. "sustainable development" means land
20 development that achieves sustainable economic and social goals
21 in ways that can be supported for the long term by conserving
22 resources, protecting the environment and ensuring human health
23 and welfare using mixed-use, pedestrian-oriented, multimodal
24 land use planning;

25 [~~V-~~] Z. "tax increment development area" means the
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1 land included within the boundaries of a tax increment
2 development district;

3 [~~W-~~] AA. "tax increment development district" means
4 a district formed for the purposes of carrying out tax
5 increment development projects;

6 [~~X-~~] BB. "tax increment development plan" means a
7 plan for the undertaking of a tax increment development
8 project;

9 [~~Y-~~] CC. "tax increment development project" means
10 activities undertaken within a tax increment development area
11 to enhance the sustainability of the local, regional or
12 statewide economy; to support the creation of jobs, schools and
13 workforce housing; and to generate tax revenue for the
14 provision of public improvements and may include:

15 (1) acquisition of land within a designated
16 tax increment development area or a portion of that tax
17 increment development area;

18 (2) demolition and removal of buildings and
19 improvements and installation, construction or reconstruction
20 of streets, utilities, parks, playgrounds and improvements
21 necessary to carry out the objectives of the Tax Increment for
22 Development Act;

23 (3) installation, construction or
24 reconstruction of streets, water utilities, sewer utilities,
25 parks, playgrounds and other public improvements necessary to

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1 carry out the objectives of the Tax Increment for Development
2 Act;

3 (4) disposition of property acquired or held
4 by a tax increment development district as part of the
5 undertaking of a tax increment development project at the fair
6 market value of such property for uses in accordance with the
7 Tax Increment Development Act;

8 (5) payments for professional services
9 contracts necessary to implement a tax increment development
10 plan or project;

11 (6) borrowing to purchase land, buildings or
12 infrastructure in an amount not to exceed the revenue stream
13 that may be derived from the gross receipts tax increment or
14 the property tax increment estimated to be received by a tax
15 increment development district; and

16 (7) grants for public improvements essential
17 to the location or expansion of a business;

18 DD. "taxable gross receipts" means "gross receipts"
19 as that term is defined for purposes of the Gross Receipts and
20 Compensating Tax Act, excluding any exemptions and less any
21 deductions allowed for purposes of the Gross Receipts and
22 Compensating Tax Act, that are reported within a tax increment
23 development district on returns for which the corresponding
24 gross receipts tax has been paid;

25 [~~Z.~~] EE. "taxing entity" means the governing body

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1 of a political subdivision of the state, the gross receipts tax
2 increment or property tax increment of which may be used for a
3 tax increment development project; and

4 ~~[AA.]~~ FF. "workforce housing" means decent, safe
5 and sanitary dwellings, apartments, single-family dwellings or
6 other living accommodations that are affordable for persons or
7 families earning less than eighty percent of the median income
8 within the county in which the tax increment development
9 project is located; provided that an owner-occupied housing
10 unit is affordable to a household if the expected sales price
11 is reasonably anticipated to result in monthly housing costs
12 that do not exceed thirty-three percent of the household's
13 gross monthly income; provided that:

14 (1) determination of mortgage amounts and
15 payments are to be based on down payment rates and interest
16 rates generally available to lower- and moderate-income
17 households; and

18 (2) a renter-occupied housing unit is
19 affordable to a household if the unit's monthly housing costs,
20 including rent and basic utility and energy costs, do not
21 exceed thirty-three percent of the household's gross monthly
22 income."

23 Section 3. Section 5-15-15 NMSA 1978 (being Laws 2006,
24 Chapter 75, Section 15) is amended to read:

25 "5-15-15. TAX INCREMENT FINANCING--GROSS RECEIPTS TAX
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1 INCREMENT.--

2 A. Notwithstanding any law to the contrary, but in
3 accordance with the provisions of the Tax Increment for
4 Development Act, a tax increment development plan, as
5 originally approved or as later modified, may contain a
6 provision that a portion of certain gross receipts tax
7 increments collected within the tax increment development area
8 after the effective date of approval of the tax increment
9 development plan may be dedicated for the purpose of securing
10 gross receipts tax increment bonds pursuant to the Tax
11 Increment for Development Act.

12 B. As to a district formed by a municipality, a
13 portion of any of the following gross receipts tax increments
14 may be paid by the state directly into a special fund of the
15 district to pay the principal of, the interest on and any
16 premium due in connection with the bonds of, loans or advances
17 to, or any indebtedness incurred by, whether funded, refunded,
18 assumed or otherwise, the authority for financing or
19 refinancing, in whole or in part, a tax increment development
20 project within the tax increment development area:

21 (1) municipal gross receipts tax authorized
22 pursuant to the Municipal Local Option Gross Receipts Taxes
23 Act;

24 (2) municipal environmental services gross
25 receipts tax authorized pursuant to the Municipal Local Option

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1 Gross Receipts Taxes Act;

2 (3) municipal infrastructure gross receipts
3 tax authorized pursuant to the Municipal Local Option Gross
4 Receipts Taxes Act;

5 (4) municipal capital outlay gross receipts
6 tax authorized pursuant to the Municipal Local Option Gross
7 Receipts Taxes Act;

8 (5) [~~municipal regional transit gross receipts~~
9 ~~tax authorized pursuant to the Municipal Local Option Gross~~
10 ~~Receipts Taxes Act~~] quality of life gross receipts tax
11 authorized pursuant to the Municipal Local Option Gross
12 Receipts Taxes Act;

13 (6) municipal regional spaceport gross
14 receipts tax authorized pursuant to the Municipal Local Option
15 Gross Receipts Taxes Act;

16 (7) municipal higher education facilities
17 gross receipts tax authorized pursuant to the Municipal Local
18 Option Gross Receipts Taxes Act;

19 [~~(6)~~] (8) an amount distributed to
20 municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA
21 1978; and

22 [~~(7)~~] (9) the state gross receipts tax.

23 C. As to a district formed by a county, all or a
24 portion of any of the following gross receipts tax increments
25 may be paid by the state directly into a special fund of the
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1 district to pay the principal of, the interest on and any
2 premium due in connection with the bonds of, loans or advances
3 to or any indebtedness incurred by, whether funded, refunded,
4 assumed or otherwise, the district for financing or
5 refinancing, in whole or in part, a tax increment development
6 project within the tax increment development area:

7 (1) local hospital gross receipts tax
8 authorized pursuant to the Local Hospital Gross Receipts Tax
9 Act;

10 [~~(1)~~] (2) county gross receipts tax authorized
11 pursuant to the County Local Option Gross Receipts Taxes Act;

12 (3) special county hospital gross receipts tax
13 authorized pursuant to the County Local Option Gross Receipts
14 Taxes Act;

15 (4) county fire protection excise tax
16 authorized pursuant to the County Local Option Gross Receipts
17 Taxes Act;

18 [~~(2)~~] (5) county environmental services gross
19 receipts tax authorized pursuant to the County Local Option
20 Gross Receipts Taxes Act;

21 (6) county health care gross receipts tax
22 authorized pursuant to the County Local Option Gross Receipts
23 Taxes Act;

24 [~~(3)~~] (7) county infrastructure gross receipts
25 tax authorized pursuant to the County Local Option Gross

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1 Receipts Taxes Act;

2 (8) county education gross receipts tax
3 authorized pursuant to the County Local Option Gross Receipts
4 Taxes Act;

5 [~~4~~] (9) county capital outlay gross receipts
6 tax authorized pursuant to the County Local Option Gross
7 Receipts Taxes Act;

8 (10) county area emergency communications and
9 emergency medical and behavioral health services tax or
10 countywide emergency communications and emergency medical and
11 behavioral health services tax authorized pursuant to the
12 County Local Option Gross Receipts Taxes Act;

13 [~~5~~] (11) county regional transit gross
14 receipts tax authorized pursuant to the County Local Option
15 Gross Receipts Taxes Act; [and]

16 (12) quality of life gross receipts tax
17 authorized pursuant to the County Local Option Gross Receipts
18 Taxes Act;

19 (13) county regional spaceport gross receipts
20 tax authorized pursuant to the County Local Option Gross
21 Receipts Taxes Act;

22 (14) water and sanitation gross receipts tax
23 authorized pursuant to the County Local Option Gross Receipts
24 Taxes Act;

25 (15) county correctional facility gross

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1 receipts tax authorized pursuant to the County Correctional
2 Facility Gross Receipts Tax Act;

3 (16) an amount distributed to counties
4 pursuant to Section 7-1-6.47 NMSA 1978; and

5 [~~6~~] (17) the state gross receipts tax.

6 D. The gross receipts tax increment generated by
7 the imposition of municipal or county local option gross
8 receipts taxes specified by statute for particular purposes may
9 nonetheless be dedicated for the purposes of the Tax Increment
10 for Development Act if intent to do so is set forth in the tax
11 increment development plan approved by the governing body, if
12 the purpose for which the increment is intended to be used is
13 consistent with the purposes set forth in the statute
14 authorizing the municipal or county local option gross receipts
15 tax.

16 E. An imposition of a gross receipts tax increment
17 attributable to the imposition of a gross receipts tax by a
18 taxing entity may be dedicated for the purpose of securing
19 gross receipts tax increment bonds with the agreement of the
20 taxing entity, evidenced by a resolution adopted by a majority
21 vote of that taxing entity. A taxing entity shall not agree to
22 dedicate for the purposes of securing gross receipts tax
23 increment bonds more than seventy-five percent of its gross
24 receipts tax increment attributable to the imposition of gross
25 receipts taxes by the taxing entity. A resolution of the

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1 taxing entity to dedicate a gross receipts tax increment or to
2 increase the dedication of a gross receipts tax increment shall
3 become effective only on January 1 or July 1 of the calendar
4 year.

5 F. An imposition of a gross receipts tax increment
6 attributable to the imposition of the state gross receipts tax
7 within a district may be dedicated for the purpose of securing
8 gross receipts tax increment bonds with the agreement of the
9 state board of finance, evidenced by a resolution adopted by a
10 majority vote of the state board of finance. The state board
11 of finance shall not agree to dedicate more than seventy-five
12 percent of the gross receipts tax increment attributable to the
13 imposition of the state gross receipts tax within the district.
14 The resolution of the state board of finance shall become
15 effective only on January 1 or July 1 of the calendar year and
16 shall find that:

17 (1) the state board of finance has reviewed
18 the request for the use of the state gross receipts tax;

19 (2) based upon review by the state board of
20 finance of the applicable tax increment development plan, the
21 dedication by the state board of finance of a portion of the
22 gross receipts tax increment attributable to the imposition of
23 the state gross receipts tax within the district for use in
24 meeting the required goals of the tax increment plan is
25 reasonable and in the best interest of the state; and

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1 (3) the use of the state gross receipts tax is
2 likely to stimulate the creation of jobs, economic
3 opportunities and general revenue for the state through the
4 addition of new businesses to the state and the expansion of
5 existing businesses within the state.

6 G. The governing body of the jurisdiction in which
7 a tax increment development district has been established shall
8 timely notify the assessor of the county in which the district
9 has been established, the taxation and revenue department and
10 the local government division of the department of finance and
11 administration when:

12 (1) a tax increment development plan has been
13 approved that contains a provision for the allocation of a
14 gross receipts tax increment;

15 (2) any outstanding bonds of the district have
16 been paid off; and

17 (3) the purposes of the district have
18 otherwise been achieved."

19 Section 4. A new section of the Tax Increment for
20 Development Act, Section 5-15-16.1 NMSA 1978, is enacted to
21 read:

22 "5-15-16.1. [NEW MATERIAL] DISPOSITION OF BALANCES IN
23 THE DEBT SERVICE RESERVE ACCOUNT.--

24 A. During the period that gross receipts tax
25 increment bonds are outstanding or have not yet been issued,
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1 any balances in a debt service reserve account in excess of
2 amounts necessary to pay the principal and interest due on
3 gross receipts tax increment bonds within the following twelve
4 months shall be paid to the governments that have dedicated a
5 gross receipts tax increment to the district in proportion to
6 the amount of the gross receipts tax increment attributable to
7 their dedication.

8 B. Any balances in a debt service reserve account
9 after all obligations with respect to the gross receipts tax
10 increment bonds for which the account was established have been
11 satisfied shall be paid to the governments that have dedicated
12 a gross receipts tax increment to the district in proportion to
13 the amount of the gross receipts tax increment attributable to
14 their dedication."

15 Section 5. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2009.